



## DEPARTMENT OF THE INTERIOR

[FWS-R4-ES-2023-N005; FVHC98220410150-XXX-FF04H00000]

### **Deepwater Horizon Natural Resource Damage Assessment Open Ocean Trustee Implementation Group Draft Restoration Plan 3 and Environmental Assessment: Birds**

**AGENCY:** Department of the Interior.

**ACTION:** Notice of availability; request for public comments.

**SUMMARY:** In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the *Deepwater Horizon* (DWH) Oil Spill *Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement* (Final PDARP/PEIS), Record of Decision and Consent Decree, the Federal natural resource trustee agencies for the Open Ocean Trustee Implementation Group (Open Ocean TIG) have prepared the *Draft Restoration Plan 3 and Environmental Assessment: Birds* (Draft RP/EA). The Draft RP/EA proposes projects to help restore bird species injured in the DWH oil spill. The Draft RP/EA evaluates a reasonable range of 11 project alternatives under the Oil Pollution Act's Natural Resource Damage Assessment regulations and NEPA. The total cost to implement the Open Ocean TIG's seven preferred alternatives is approximately \$26,000,000. A No Action alternative is also analyzed. The Open Ocean TIG invites comments on the Draft RP/EA.

**DATES: Submitting Comments:** The Open Ocean TIG will consider public comments on the Draft RP/EA received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**Public Webinar:** The Open Ocean TIG will host two public webinars during the public comment period. The webinars will include an overview presentation of the Draft

RP/EA and an open house session for general questions regarding the plan. The public will also be able to provide formal comments during the webinar. The public may register for the webinars at <https://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean>. After registering for a webinar, participants will receive a confirmation email with instructions for joining the webinar. Instructions for commenting will be provided during the webinar. Presentation material and factsheets about the projects can be found on the web at <https://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean>.

**ADDRESSES: Obtaining Documents:** You may download the Draft RP/EA at <https://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean>. Alternatively, you may request a USB flash drive containing the Draft RP/EA (see **FOR FURTHER INFORMATION CONTACT**).

**Submitting Comments:** You may submit comments on the Draft RP/EA by one of the following methods:

- *Internet:* <https://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean>.
- *U.S. Mail:* US Fish and Wildlife Service Gulf Restoration Office, 1875 Century Blvd., Atlanta, GA 30345. To be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.
- *During the public webinar:* Verbal comments may be provided by the public during the webinar. Webinar information is provided in **DATES**.
- *Telephone:* 1-888-467-0009. Comments may be provided by leaving voice comment at this number. To be considered, voice comments left at this toll-free international phone number must be left on or before the comment deadline given in **DATES**.

**FOR FURTHER INFORMATION CONTACT:** Nanciann Regalado, at [nanciann\\_regalado@fws.gov](mailto:nanciann_regalado@fws.gov) or 1-678-296-6805. Individuals in the United States who

are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Introduction**

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* (DWH), which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist had the spill not occurred). This includes the loss of use and services

provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the U.S. Fish and Wildlife Service, National Park Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a consent decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States v. BPXP et al.*, Civ. No. 10-4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig *Deepwater Horizon* in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (<https://www.epa.gov/enforcement/consent-decree-deepwater-horizon-bp-gulf-mexico-oil-spill>). Pursuant to the Consent Decree, the Open Ocean TIG chooses and manages restoration projects in the Open Ocean

Restoration Area. The Open Ocean TIG is composed of the following Federal Trustees: DOI, NOAA, EPA, and USDA.

## **Background**

On March 25, 2021, the Open Ocean Trustee Implementation Group (Open Ocean TIG) issued a notice of solicitation on the Gulf Spill Restoration website requesting project ideas for the Sturgeon and Birds Restoration Types. On March 11, 2022, the Open Ocean TIG announced that it had reviewed project idea submissions and had initiated drafting its third restoration plan and environmental assessment (Draft RP/EA), which would include a reasonable range of restoration alternatives (projects) for the Birds Restoration Type only.

## **Overview of the Open Ocean TIG's Draft RP/EA**

The Draft RP/EA is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, the Final PDARP/PEIS, and the Consent Decree. The Draft RP/EA provides OPA NRDA and NEPA analyses for a reasonable range of 11 alternatives. The Open Ocean TIG's seven proposed preferred alternatives are listed below. If selected, funding to implement these projects would come from the Birds Restoration Type allocation.

- Predator Removal and Seabird Nesting Colony Restoration at Mona Island
- Seabird Nesting Colony Reestablishment and Protection at Desecheo National Wildlife Refuge
- Seabird Nesting Colony Protection and Enhancement at Dry Tortugas National Park
- Seabird Bycatch Reduction in Northeast U. S. and Atlantic Canada Fisheries
- Northern Gannet Nesting Colony Restoration in Eastern Canada
- Common Tern Nesting Colony Restoration in Manitoba

- Invasive Goat Removal to Restore Seabird Nesting Habitat in St. Vincent and the Grenadines

## **Next Steps**

As described above in **DATES**, the Open Ocean TIG will host two (2) public webinars to facilitate the public review and comment process. They are also providing an international toll-free telephone number for the public to leave comments via voice message. After the public comment period ends, the Open Ocean TIG will consider and address the comments received before issuing a final RP/EA.

## **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **Administrative Record**

The documents comprising the Administrative Record for the Draft RP/EA can be viewed electronically at <https://www.doi.gov/deepwaterhorizon/adminrecord> under folder 6.5.2.2.3.

## **Authority**

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

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